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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2005-91; FAR Case 2016-009; Item VIII; Docket No. 2016-0009, Sequence No. 1]

RIN 9000-AN25

Federal Acquisition Regulation; New Designated Countries—Ukraine and Moldova

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to add Ukraine and Moldova as new designated countries under the World Trade Organization Government Procurement Agreement (WTO GPA).

DATES: Effective: [Insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202-219-0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat

Division at 202-501-4755. Please cite FAC 2005-91, FAR Case 2016-009.

SUPPLEMENTARY INFORMATION:

I. Background

Ukraine and Moldova recently became parties to the WTO GPA on May 18, 2016, and July 14, 2016, respectively. The Trade Agreements Act (19 U.S.C. 2501 et seq.) provides the authority for the President to waive the Buy American statute and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States (such as the WTO GPA). The President has delegated this authority to the U.S. Trade Representative.

The U.S. Trade Representative has determined that Ukraine and Moldova will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services. The U.S. Trade Representative published notices in the Federal Register waiving the Buy American statute and other discriminatory provisions for eligible products from Ukraine at 81 FR 31292 on May 18, 2016, and Moldova at 81 FR 50045 on July 29, 2016.

II. Discussion and Analysis

Therefore, this rule adds Ukraine and Moldova to the list of WTO GPA countries wherever it appears in the FAR, whether as a separate definition, part of the definition of "designated country" or "Recovery Act designated country," or as part of the list of countries exempt from the prohibition of acquisition of products produced by forced or indentured child labor (FAR 22.1503, 25.003, 52.222-19, 52.225-5, 52.225-11, and 52.225-23).

Conforming changes are made to FAR 52.212-5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, and 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

III. Publication of this final rule for public comment is not required by statute

"Publication of proposed regulations," 41 U.S.C. 1707, is the statute that applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or

form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it has no significant cost or administrative impact on contractors or offerors. It is just updating the lists of designated countries, in order to conform to the determinations by the U.S. Trade Representative.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a

significant FAR revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 and does not require publication for public comment.

VI. Paperwork Reduction Act

The Paperwork Reduction Act does apply, because the rule affects the response of an offeror that is offering a product of Ukraine or Moldova to the information collection requirements in the provisions at FAR 52.212-3(g)(5), 52.225-6, and 52.225-11. The offeror no longer needs to list a product from Ukraine or Moldova under "other end products," because Ukraine and Moldova are now designated countries. These information collection requirements are currently approved under OMB Control Numbers 9000-0025, titled: Trade Agreements Certificate; 9000-0136, titled: Commercial Item Acquisitions; and 9000-0141, Buy American-Construction, respectively. The impact, however, is negligible.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

Dated: September 19, 2016.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

1. The authority citation for 48 CFR parts 22, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT

ACQUISITIONS

22.1503 [Amended]

2. Amend section 22.1503 by removing from paragraph (b) (4) "Malta," and "Taiwan," and adding "Malta, Moldova," and "Taiwan, Ukraine," in their places, respectively.

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

3. Amend section 25.003 by—

a. Removing from the definition "Designated country", paragraph (1), the words "Malta," and "Matsu (Chinese Taipei))" and adding "Malta, Moldova," and "Matsu (Chinese Taipei))", Ukraine," in their places, respectively; and

b. Removing from the definition "World Trade Organization Government Procurement Agreement (WTO GPA) country" "Malta," and "Taiwan," and adding the words

"Malta, Moldova," and "Taiwan, Ukraine," in their places, respectively.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.212-5 by revising the date of the clause and paragraphs (b) (26) and (49) to read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

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CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER])

* * * * *

(b) * * *

___ (26) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (**[INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**) (E.O. 13126).

* * * * *

___ (49) 52.225-5, Trade Agreements (**[INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

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5. Amend section 52.213-4 by revising the date of the clause and paragraph (b) (1) (ii) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

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**TERMS AND CONDITIONS-SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL
ITEMS) ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER PUBLICATION IN
THE FEDERAL REGISTER])**

* * * * *

(b) * * *

(1) * * *

(ii) 52.222-19, Child Labor-Cooperation with
Authorities and Remedies (**[INSERT ABBREVIATED MONTH AND YEAR 30
DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER])** (E.O.
13126). (Applies to contracts for supplies exceeding the
micro-purchase threshold).

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6. Amend section 52.222-19 by-

a. Revising the date of the clause; and

b. Removing from paragraph (a)(4) "Malta," and
"Taiwan," and adding "Malta, Moldova," and "Taiwan,
Ukraine," in their places, respectively.

The revision reads as follows:

**52.222-19 Child Labor-Cooperation with Authorities and
Remedies.**

* * * * *

**CHILD LABOR-COOPERATION WITH AUTHORITIES AND REMEDIES ([INSERT
ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE
FEDERAL REGISTER])**

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7. Amend section 52.225-5 by-

a. Revising the date of the clause; and

b. Removing from paragraph (a), in the definition "Designated country" paragraph (1), the words "Malta," and "Matsu (Chinese Taipei)" , " and adding "Malta, Moldova," and "Matsu (Chinese Taipei)" , Ukraine," in their places, respectively.

The revision reads as follows:

52.225-5 Trade Agreements.

* * * * *

TRADE AGREEMENTS ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER])

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8. Amend section 52.225-11 by-

a. Revising the date of the clause; and

b. Removing from paragraph (a), in the definition "Designated country", paragraph (1) the words "Malta," and "Taiwan," and adding "Malta, Moldova," and "Taiwan, Ukraine," in their places, respectively.

The revision reads as follows:

52.225-11 Buy American Act—Construction Materials under Trade Agreements.

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BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER])

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9. Amend section 52.225-23 by—

a. Revising the date of the clause; and

b. Removing from paragraph (a), in the definition “Designated country”, paragraph (1) the words “Malta,” and “Taiwan,” and adding “Malta, Moldova,” and “Taiwan, Ukraine,” in their places, respectively; and

c. Removing from paragraph (a), in the definition “Recovery Act designated country”, paragraph (1) the words “Malta,” and “Taiwan,” and adding “Malta, Moldova,” and “Taiwan, Ukraine,” in their places, respectively.

The revision reads as follows:

**52.225-23 Required Use of American Iron, Steel, and
Manufactured Goods—Buy American Statute—Construction
Materials Under Trade Agreements.**

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**REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—BUY
AMERICAN STATUTE—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS ([INSERT
ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE
FEDERAL REGISTER])**

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